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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 000730

SENSITIVE, SIPDIS

STATE FOR SCA/INS

E.O 12958: DECL 07/29/2018

TAGS: [ECON](#) [EINV](#) [KCOR](#) [KMCA](#) [PGOV](#) [CE](#)

SUBJECT: SRI LANKA: TREASURY SECRETARY OFFERS TO RESIGN FOLLOWING
SUPREME COURT RULING

REF: (A) 07 COLOMBO 1464
(B) 07 COLOMBO 1232
(C) 07 COLOMBO 779

Classified by Ambassador Robert O. Blake, Reasons 1.4 (b)(d)

¶1. (SBU) Summary: On July 28, P. B. Jayasundera, Treasury Secretary, handed in his resignation following a Supreme Court judgment that severely criticized his role in the privatization of Lanka Marine Services (LMS), a government-owned bunkering company. Jayasundera, Rajapakse's primary economic advisor and an important confidant, was also fined Rs 500,000 (USD 5000) as punishment for his role in the privatization decision. Despite his offer to resign, Jayasundera told the Ambassador he expects to remain in his position. End Summary

Privatization of LMS

¶2. (U) Formerly GSL-owned Lanka Marine Services (LMS), the only bunkering company in the Port of Colombo, was sold in 2002 to John Keells Holdings Ltd (JKH), the largest blue chip conglomerate in Sri Lanka. JKH paid Rs 1.19 billion (~USD 12.4 million in 2002 dollars) for the acquisition. JKH was also granted special tax concessions (three year tax holiday and concessionary rates in years four and five) as part of deal. In 2004, the government transferred the ownership of eight acres of land where JKH's shore facilities are located within the Port of Colombo to JKH at no additional cost. During these transaction periods, Jayasundera directly supervised the privatization of LMS in his role as Chairman of the Public Enterprises Reform Commission (PERC), the GSL's privatization agency.

Supreme Court Rules Transfer was Illegal;
Criticizes and Fines Jayasundera

¶3. (U) In a July 21 judgment the Supreme Court - acting on a fundamental rights application of a lawyer turned communist politician- said Jayasundera had acted against the public interest to secure illegal advantages for JKH. The Supreme Court said "the entire process of the sale of LMS to JKH had been done without lawful authority." It harshly criticized Jayasundera, stating that "from the very commencement of the process [he] acted outside the authority of the applicable law...[He] purported to arrogate to himself the

authority of the Executive Government. His action is not only illegal and in excess of lawful authority but also biased and in favor of JKH."

14. (SBU) Jayasundera was faulted by the court for numerous actions that led to JKH's acquisition of LMS. These included, among others: acting against a liberalization plan that had been established by the Cabinet of Ministers; failing to allow a cabinet-appointed tender board or negotiating committee to oversee the transaction; collaboration with the Board of Investment to provide a tax holiday for JKH (which turned a tax-paying government enterprise into a tax-free private enterprise); failing to obtain a government valuation of the business/property; and selling land that he had no right to sell (the land within the port belonged to the Port Authority, not LMS). As a result of his actions, Jayasundera was ordered to pay Rs 500,000 (USD 5,000) from his private funds as compensation to the government. He paid and offered his resignation on July 28; however, he reported to work the morning on July 29. When asked by the Ambassador if the President would reject his resignation and keep him in his current position, Jayasundera said "Yes. Things are being worked out."

15. (U) The LMS case also listed several former (and current ministers who crossed over), then Prime Minister and current opposition leader Ranil Wickremasinghe, and several other key officials as respondents. Despite the fact that some believe that Jayasundera was acting on the directions of his political bosses, the judgment was largely silent on their roles

A Case of Political Bickering?

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16. (SBU) While Sri Lanka is in desperate need of more government action against corruption, poor relations between Supreme Court Chief Justice Sarath Silva (who is estranged from the President) and Presidential-favorite Jayasundera likely influenced the fact that this case saw the light of day. Relations between the two have been difficult for some time. The President is known to want Silva removed and replaced by a confidante. Jayasundera, in his capacity as Treasury Secretary, recently declined a highly-publicized salary increase request by the judiciary that would have put judges' salaries on par with those of Members of Parliament.

More to Come?

17. (U) The Chief Justice is presently presiding over another fundamental rights application that involves Jayasundera. This case involves the 2003 privatization of Sri Lanka Insurance Corporation. The court is widely expected to deliver a similar judgment in this case.

Comment

18. (C) Corruption continues to be a widespread problem in Colombo. Government officials are widely understood to be involved in taking bribes while also inhibiting corruption and bribery cases against political allies. For example, when the Commission to Investigate Allegations of Bribery and Corruption (Bribery Commission) was moving forward earlier this year with an investigation into the government's shady purchase of MIG-27 aircraft from Ukraine, the President removed the Director General of the Commission, "transferring" him to the President's Secretariat. As the DG is the only individual within the Bribery Commission authorized to sign indictment charges, Rajapakse effectively stopped the ability of the Commission to operate.

19. (C) The court's action was not the first time the LMS deal was criticized; Parliament's Committee on Public Enterprises (COPE) did so in 2007. The fact that this case made it to the Supreme Court, and that the court issued a decision damning Jayasundera, is surprising. Nevertheless, it unfortunately does not demonstrate a new commitment by the government to combat corruption. It is, rather, a case of personal dislike between the Chief Justice and

Jayasundera that is being played out in a public forum.
Jayasundera's continuation in his job reinforces the government's
(Rajapakse's) desire to keep the status quo.